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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM 1942.

No. 750

In the Matter of
THAD BENSON CARTER,
Farmer Debtor.

THAD BENSON CARTER,
Petitioner,

v.

GEORGE A. KUBLER,
Respondent.

REPLY BRIEF FOR THE PETITIONER.

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Petitioner.

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SUBJECT INDEX

	PAGE
Page 2 of Respondent's Brief (last portion of page)	2
Page 2 of Respondent's Brief (bottom of page)	3
Page 8 of Respondent's Brief (top half of page)	3
Page 8 of Respondent's Brief (bottom of page)	4
Page 10 of Respondent's Brief (middle of page)	5
Page 10 of Respondent's Brief (under "Conclusion")	5

CASE INDEX

Borchard v. California Bank, 310 U. S. 311	6
John Hancock v. Bartels, 308 U. S. 180	6
Mahaffey, In re, 129 Fed. (2d) 292	2
Peterson, In re, 39 Fed. Supp. 931	2
Wright v. Logan, 313 U. S. 139	6
Wright v. Union Central, 311 U. S. 273	3, 6, 7
Wragg v. New Orleans, 63 S. Ct. 273	6

OTHER AUTHORITIES.

Bankruptcy Law	
Section 75 (s)	2, 4
Section 75 (s) (2)	2

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On behalf of the petitioner there are a few statements contained in the respondent's brief which should be noticed. They will be discussed in the order of the paging of respondent's brief.

Page 2 of Respondent's Brief.

(The last portion of the page.)

There is nothing in the record to show the nature of the rental order. Whether or not that order required the petitioner to pay taxes is not known. If he was ordered to pay taxes such an order has been held to be void and of no effect and not warranted in the statute which orders that:

> "Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors and applied on their claims, as their interests may appear." Section 75 (s)(2).

The Second Circuit in *In re Mahaffey*, CCA 2 (1940) 129 Fed. (2d) 292, held such an order to pay taxes to be absolutely void and upheld the noncompliance of it by the farmer debtor.

The District Court of Iowa in *In re Peterson*, (1941), 39 Fed. Supp. 931, held such an order to be not one made pursuant to the provisions of Section 75 and therefore that disobedience of it was not a ground for termination of the case.

The record shows that the respondent made no objection whatever to the former appraisal of $5800. It is now idle to assert that it was not the "fair and reasonable market value" of the farm. The only authority under which the conciliation commissioner could find its value was the following statutory provision:

> "Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value." Section 75 (s) (first unnumbered paragraph).

There is no evidence anywhere in the record that the farmer debtor did not pay the rental. Even if he had not paid the rental it is no excuse for defeating his right to redeem by setting a fictitious and impossible value for redemption. *Wright* v. *Union Central*, (1940), 311 U. S. 273.

Page 2 of Respondent's Brief

(At bottom of the page.)

The statement that "such claims [that devices were employed to defeat the purpose of Section 75] are unsupported by the record evidence" is not warranted.

It is true that they are not all supported by the "record evidence" but as indicated in the references to the record which are shown at pages 18 to 21 of the petitioner's brief, the various parts of the **record** within that part which contains the evidence and elsewhere demonstrates that three different methods or devices of evading the purpose of Section 75 were employed.

Page 8 of Respondent's Brief.

(Top half of page.)

Here the statements at page 2 of the respondent's brief are repeated. They are discussed at page 2 of this reply brief.

In addition the respondent's brief says that no evidence was taken when the original appraisal of $5800 was arrived at. That is true, but the respondent had four months within which to file objections, exceptions and take appeals.

No claim is made that any objection or appeal was made or taken by any one.

> "The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this Act: *Provided*, That in proceedings under this section, either party may file objections, exceptions and take appeals within four months from the date that the referee approves the appraisal." Section 75 (s) first (unnumbered) paragraph.

There is not a scintilla of any evidence or claim that the $5800 appraisal approved by the conciliation commissioner under Section 75 (s), first (unnumbered) paragraph, was not the "fair and reasonable market value" as required by statute.

On the contrary the record at R. 26, bottom of page, and R. 27, top of page, shows the conciliation commissioner stating that the "Appraisement of Carter's farm in these proceedings was $5800."

The record at R. 39 to 41 contains the affidavits of two of the original appraisers who state that the $5800 was "the then fair and reasonable market value" and "that said conciliation commissioner, Harry F. Wood, at the time when the appraisal was reported to him by said appraisers, said that $5800 was no more than the farm was worth, and he expressed his agreement with the appraisers".

Page 8 of Respondent's Brief.

(Bottom of page.)

That part of the evidence whereon the conciliation commissioner stated that he had originally fixed the value at $5800 in the same proceeding (R. 26 to 27) was as much a

part of the evidence and record before him as any other evidence on which he ruled.

The finding of the district judge is vitiated by his entire disregard of the original $5800 valuation fixed by the same conciliation commissioner upon the ground (as stated by the judge at bottom of R. 35) that "However, that value, the commissioner stated, was made for taxation purposes". There is no statement anywhere in the record that supports this statement. If it was made in private conversation between the conciliation commissioner and the judge, such basis is an additional reason for upsetting the findings of the district court. It is directly contrary to the statement of the conciliation commissioner at R. 26 and 27.

Page 10 of Respondent's Brief.

(Middle of the page.)

The reference evidently is to the statement made by the respondent at the close of the evidence on valuation at R. 27 that the respondent's mortgage was $34,702.53. This evidence was immaterial—it was no element for fixing valuation. It was undoubtedly considered by the court.

Page 10 of Respondent's Brief.

(Under "Conclusion")

The respondent puts this proposition to this court:

> "In conclusion, may we respectfully submit on behalf of the respondent that since Mr. Carter has held and resided on the farm in question for more than eight years since these bankruptcy proceedings were insti-

tuted and has reaped the benefits and income from the use of such farm, and that he has not paid a cent of interest on this mortgage obligation since September, 1931, and that there has been no reduction of the mortgage debt since that time, and that taxes and rental value fixed in 1936 were not even paid, it is certainly not unreasonable, or in derogation of the farm debtor's rights, to have this litigation concluded."

These *argumentum ad hominem* statements are partly untrue and partly unfair. The same kind of statements were made by the mortgage holders and repudiated by this court in

John Hancock v. *Bartels*, (1939), 308 U. S. 180;
Borchard v. *California Bank*, (1940), 310 U. S. 311;
Wright v. *Union Central*, (1940), 311 U. S. 273;
Wright v. *Logan*, (1942), 315 U. S. 139;
Wragg v. *New Orleans*, (1943), ... U. S. ....., 63 S. Ct. 273.

This mode of argument is further evidence, if more is needed, of the arguments pressed upon the courts below in the realm of Lincoln's expression that "some means may be found to cheat the law".

On the contrary we think the petitioner, and every other farmer debtor, is entitled to genuine respect for the statute of the United States which intends that the farmer debtor shall have a real opportunity to redeem his farm at its "fair and reasonable market value" and that due process of law shall be observed in arriving at that value. Such respect for the purpose of the statute requires that the amount of liens against the farms shall be absolutely disregarded in fixing that value. Otherwise "the law is cheated" of its beneficent purpose.

"Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress (*John Hancock Mutual Life Ins. Co.* v. *Bartels*, [308 U. S. 180]; *Kalb* v. *Feuerstein*, [308 U. S. 433]), lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act." *Wright* v. *Union Central*, (1940), 311 U. S. 273 at 279.

Respectfully submitted,

ELMER MCCLAIN, Lima Ohio,
Counsel for the Petitioner, Thad Benson Carter.

March 13, 1943.